



STATE OF INDIANA

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May 16, 2016

Mr. Thomas Sparrow
7412 Old Smith Valley Road
Greenwood, Indiana 46143

Re: Formal Complaint 16-FC-85; Alleged Violation of the Access to Public Records Act by the Johnson County Prosecutor's Office

Dear Mr. Sparrow:

This advisory opinion is in response to your formal complaint alleging the Johnson County Prosecutor's Office ("Office") and Mr. Bradley Cooper, Esq., violated the Access to Public Records Act ("APRA"), Indiana Code § 5-14-3-1 et. seq. The Office has responded via Prosecutor Cooper. His response is enclosed for your review. Pursuant to Indiana Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on April 11, 2016.

BACKGROUND

Your complaint dated April 11, 2016 alleges the Johnson County Prosecutor's Office; Mr. Bradley Cooper, Prosecutor violated the Access to Public Records Act by improperly denying your records request.

On March 30, 2016 you sent a records request to the Office, seeking all email communications sent or received by the Office which are related to you, Thomas Sparrow, which were sent or received between March 28 and March 30, 2016. Your request was acknowledged and you were informed on April 4, 2016 the Prosecutor's Office considered the records investigatory in nature and wished to exercise its discretion to withhold the records.

On April 22, 2016 the Office responded. The Office states its records are investigatory materials exempt from disclosure under the APRA.

ANALYSIS

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” *See Indiana Code § 5-14-3-1*. The Johnson County Prosecutor’s Office is a public agency for the purposes of the APRA. *See Indiana Code § 5-14-3-2(n)(1)*. Accordingly, any person has the right to inspect and copy the Office’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. *See Indiana Code § 5-14-3-3(a)*.

A request for records may be oral or written. *See Indiana Code § 5-14-3-3(a); § 5-14-3-9(c)*. If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See Indiana Code § 5-14-3-9(b)*. A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

Within a reasonable time after the request is received by the agency, the public agency shall either provide the requested copies to the person making the request; or allow the person to make copies.” *See Indiana Code § 5-14-3-4(b)*. If an agency denies a records request, the denial must be in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and the name and the title or position of the person responsible for the denial. *See Indiana Code § 5-14-3-9(d)*.

Indiana Code § 5-14-3-4(b)(1) provides that a law enforcement agency has discretion over the disclosure of investigatory records. An investigatory record is “information compiled in the course of the investigation of a crime.” *See Indiana Code § 5-14-3-2(h)*. The investigatory records exception does not apply only to records of ongoing or current investigations; rather, it applies regardless of whether a crime was charged or even committed. The exception applies to all records compiled during the course of the investigation, even after an investigation has been completed. The investigatory records exception affords law enforcement agencies broad discretion in withholding such records. *See Opinion of the Public Access Counselor 09-FC-157*.

In its denial, the Office describes a general justification for withholding any documents; however, it fails to state the specific provision of Indiana law which allows non-disclosure. Furthermore, the exercise of discretion under Indiana Code § 5-14-3-4(b) must be explained with a measure of particularity and not just a cursory dismissal of “privileged.” It is not an unequivocal privilege as the Prosecutor alleges. It must not be arbitrarily applied pursuant to Indiana Code § 5-14-3-9(g). In summary, I expect a higher degree of statutory justification with my investigations under Indiana Code § 5-14-5-5. A more weighted response to your complaint would have satisfied that requirement.

This is a technical violation of the APRA –it is likely the records you seek may indeed be deliberative or part of an investigation – however, based upon the limited information provided, this Office cannot conclusively determine if the statutory justification to disclosure actually applies to the public records in question.

CONCLUSION

Based on the forgoing, it is the Opinion of the Public Access Counselor the Johnson County Prosecutor's Office has violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read 'LHB', with a long horizontal flourish extending to the left.

Luke H. Britt
Public Access Counselor

Cc: Mr. Bradley Cooper, Esq.